

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STATE OF OHIO,

Plaintiff,

vs.

LARRY E. EALY,

Defendant.

:
:
:
:
:

Case No. 3:08cv469

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #6), AND
OVERRULING PLAINTIFF'S OBJECTIONS THERETO (DOC. #9);
JUDGMENT TO BE ENTERED IN FAVOR OF THE PLAINTIFF AND
AGAINST DEFENDANT HEREIN; LEAVE TO APPEAL *IN FORMA*
PAUPERIS DENIED; TERMINATION ENTRY

Based in part upon the reasoning and citations of authority set forth by the Magistrate Judge in his Report and Recommendations, filed January 6, 2009 (Doc. #6), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts, in part, the reasoning of the aforesaid Magistrate Judge and, in its entirety, the conclusion reached therein. Defendant's Objections to said judicial filing (Doc. #9) are overruled.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. It is clear that the attempted removal by the Defendant occurred more than 30 days after the filing/arraignment of the removed case in the Dayton Municipal Court. The fact that the Defendant did not discover that the evidence in that case was destroyed until December 5, 2008, some nine and one-half months after the filing/arraignment, does not constitute good cause for permitting him to effect an untimely removal of his state case to this Court, given that the loss of the prosecution's evidence may be fully addressed by him in the state court and, if necessary, upon appeal. In short, there is simply no basis for concluding that the prosecution's loss of certain evidence is such that he cannot enforce his constitutional rights in the state court.

WHEREFORE, based upon the aforesaid, this Court adopts, in part, the reasoning and citations of authority set forth by the United States Magistrate Judge in his Report and Recommendations and adopts, in its entirety, the conclusion reached therein. Judgment will be entered in favor of Plaintiff and against Defendant, denying Defendant's attempt to remove state court case presently pending against him in the Dayton, Ohio, Municipal Court, *State of Ohio v. Larry Ealy, Sr.*, 2008-TRD-003189.

Given that any appeal from this Court's decision rendered herein would be objectively frivolous, this Court denies an anticipated request for leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

March 3, 2009

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies mailed to:

Larry Ealy, *Pro Se* Defendant

Mark Owens, Clerk of Courts